ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
JEFF HATCH-MILLER
WILLIAM A. MUNDELL
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF ICR WATER USERS ASSOCIATION, INC., FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES FOR UTILITY SERVICES

DOCKET NO: W-02824A-07-0388

NOTICE OF FILING WATER SERVICE AGREEMENT

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Phoenix, Arizona 85004-2202
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ICR Water Users Association, Inc., ("ICRWUA") hereby files the attached Water Service Agreement ("WSA") entered into between ICRWUA, Harvard Simon I, LLC, Talking Rock Land, L.L.C., and intervener Talking Rock Golf Club, L.L.C. ("TRG") on September 12, 2008. A copy of the WSA is attached hereto as Attachment A.

Background.

On June 26, 2007, ICRWUA filed an application for an increase in its permanent rates and charges with the Arizona Corporation Commission ("Commission"). On August 9, 2007, a Procedural Order was issued scheduling a hearing on January 8, 2008, and established filing dates for the proceeding. On January 8, 2008, a full public hearing was convened. At that time, Dayne Taylor, a customer of ICRWUA, was granted intervention. The parties to the case subsequently agreed to certain filing dates and to the continuance of the hearing to April 16, 2008.

On April 3, 2008, TRG filed a Motion to Intervene. TRG's intervention was granted and TRG was ordered to file testimony and exhibits by April 14, 2008.

On April 16, 2008, the public hearing resumed. After public comment, ICRWUA

indicated that it had begun to explore the resolution of certain issues that had been raised in the proceeding with TRG and that it hoped to reach a form of settlement. On April 18, 2008, ICRWUA and TRG entered into a Letter of Understanding ("LOU"). The LOU provided for the immediate transfer of a second well ("Well No. 2") from TRG to ICRWUA, and established a framework for a special contract ("Special Contract") that would govern the parties' prospective relationship and amend and largely supersede the parties' prior agreements. Immediately thereafter, ICRWUA and TRG began negotiation and preparation of a Special Contract as contemplated by the LOU. The transfer of Well No. 2 was completed on or about May 27, 2008, with the recording of a Bill of Sale and Easement dated May 21, 2008.

On May 20, 2008, representatives of the ICRWUA Board of Directors met with Mr. Taylor and a group of customers of ICRWUA in Prescott to discuss the LOU. On May 29, 2008, a meeting was held with ICRWUA, Staff and Mr. Taylor to discuss the terms and conditions of a Special Contract. In addition, ICRWUA sent explanatory letters regarding the LOU and the Board of Directors' efforts to negotiate and memorialize a Special Contract to customers on May 12, May 19, and May 27, 2008. In addition to this written material, other informal communications occurred with customers of ICRWUA.

On June 3, 2008, the ICR Board of Directors held a Special Meeting to give customers a presentation regarding the LOU and the Board's rationale for pursing a Special Contract with TRG. The Board of Directors also provided Mr. Taylor an opportunity to make his own presentation at that meeting regarding the LOU, and Mr. Taylor did make a presentation.

The parties' efforts to complete the Special Contract continued. Then, on July 31, 2008, Mr. Taylor filed a motion to schedule a procedural conference because no agreement had yet been reached between ICRWUA and TRG. On August 6, 2008,

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ICRWUA filed its response to Mr. Taylor's Motion stating that ICRWUA anticipated it would soon reach a draft agreement with TRG. ICRWUA further informed the Commission that upon completion of an agreement, it would be provided to the other parties in the case for review and comment. On August 18, 2008, Mr. Taylor's motion to schedule a procedural conference was granted and a status conference was set for September 18, 2008.

On August 29, 2008, ICRWUA and TRG completed the WSA and ICRWUA sent a draft copy of the WSA to Staff and Mr. Taylor with an e-mail requesting review and comment. At that time ICRWUA also proposed a meeting or conference call among the parties to walk through the draft WSA and address any comments or concerns that Staff or Mr. Taylor might have. Legal counsel for Staff informed counsel undersigned that Staff would wait until the WSA was executed by the parties and filed with the Commission before taking a position on the WSA. Mr. Taylor did not provide specific comments regarding the draft WSA.

After additional promptings from ICRWUA, Mr. Taylor agreed to a conference call between the parties. On September 11, 2008, ICRWUA hosted a conference call with Staff's legal counsel, Mr. Taylor, and legal counsel for TRG to solicit input regarding the draft WSA and to discuss any questions, comments or concerns that Mr. Taylor or Staff might have regarding the draft WSA. During this call, Staff counsel repeated his earlier statement that Staff would not take a position on the WSA until it was signed by the parties and submitted to the Commission. Mr. Taylor also stated that he would not provide comments regarding the WSA until it was signed by the parties and submitted to the Commission for consideration. Having provided Staff and Mr. Taylor with opportunities to comment on the draft WSA prior to its execution, and both Staff and Mr. Taylor having declined the opportunity, ICRWUA and TRG executed the WSA on September 12, 2008, a copy of which is attached.

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Summary Description of the WSA.

The WSA is intended by ICRWUA and TRG to: (1) resolve and settle concerns over existing agreements and compliance by ICRWUA with Decision 64360; (2) supersede, replace and terminate existing agreements between the parties, except for certain provisions specifically identified therein; and (3) govern the parties' relationship from the time of final Commission approval, if obtained, until the expiration of the WSA according to its terms and conditions. More specifically, the WSA provides for the transfer of the remaining well owned by TRG and/or its affiliates, Well No. 1, to ICRWUA, and for the financing of additional improvements to Well No. 2 by TRG. WSA at § 2. The WSA further provides that ICRWUA will provide water to TRG and its affiliates for landscape irrigation, lake fill, construction and other non-potable purposes up to a maximum amount of 525 acre-feet per year—the same quantity of water TRG and its affiliates are entitled to use for these purposes under the parties' existing agreements and the applicable approvals associated with the Talking Rock development. WSA at § 4. Notably, however, the WSA makes clear that water supplied for landscape irrigation, lake fill, construction and other non-potable purposes is subject to a priority for residential uses in times of water shortages. WSA at § 5.

Under the WSA, TRG will be a Special Contract customer of ICRWUA. WSA at Recital O and § 1. The WSA further sets forth rates, including a system reservation charge and a commodity charge, to be paid by TRG for water provided by ICRWUA. The commodity charge is designed in a manner intended to allow ICRWUA to recover its cost of service under the WSA, plus an appropriate operating margin. WSA at § 6. The rates and rate design established in the WSA are specifically subject to Commission approval, and are subject to modification and adjustment during the term of the agreement as set forth in the WSA. WSA at §§ 6 and 11. The WSA further provides for the provision of financial assistance to ICRWUA by TRG in the amount of $80,000 to

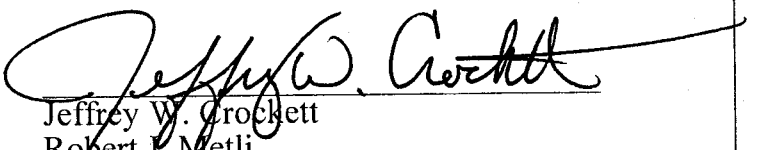
aid ICRWUA by offsetting costs of negotiating, documenting and obtaining approval of the WSA. WSA at § 7.

Request for Approval.

ICRWUA, along with TRG, will seek Commission approval of the WSA in accordance with Section 11 of the WSA. At the Procedural Conference scheduled for September 18, 2008, ICRWUA will seek a new procedural schedule for the filing of testimony by ICRWUA and TRG setting forth the parties' positions as to why approval of the WSA is in the public interest, along with an amended request for rate increases taking into account the impact of the WSA on ICRWUA's revenue requirement. ICRWUA will also seek the setting of dates for additional pre-filed testimony, including responses by the other parties to this docket, to be followed by a hearing on ICRWUA's request for rate increases. ICRWUA respectfully submits that such rate relief, along with the request for approval of the WSA, is needed at the earliest possible date in order to ensure that ICRWUA remains financially viable and allows it to continue the provision of safe and adequate water utility service to its customers.

RESPECTFULLY SUBMITTED this 12th day of September, 2008.

SNELL & WILMER



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ORIGINAL and thirteen (13) copies of the foregoing filed this 12th day of September, 2008 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

COPY of the foregoing hand delivered this 12th day of September, 2008, to:

Marc E. Stern
Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Kevin Torrey
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

COPY of the foregoing send via e-mail and first class mail this 12th day of September, 2008, to:

Mr. Dayne Taylor
13868 North Grey Bears Trail
Prescott, AZ 86305

Jay L. Shapiro
Fennemore Craig, P.C.
3003 N. Central Ave, #2600
Phoenix, AZ 85012

By: _____
\CROCKEJ\SWDMS\9104324

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ATTACHMENT A

WATER SERVICE AGREEMENT

This Water Service Agreement ("Agreement") is fully executed this 12th day of September, 2008, by and between ICR Water Users Association, Inc., an Arizona public service corporation ("ICRWUA"), Harvard Simon I, LLC ("Harvard Simon"), Talking Rock Land, L.L.C., an Arizona limited liability company ("TRL") and Talking Rock Golf Club, L.L.C., an Arizona limited liability company ("TRGC"). The parties may be referred to collectively herein as the "Parties" or individually as a "Party," and one, two or all three of "Harvard Simon", "TRL" and "TRGC" may be referred to collectively as the "Talking Rock Parties". The Parties do hereby enter into this Agreement for the purpose of seeking approval of the Arizona Corporation Commission ("ACC") to: (1) resolve and settle the Parties' respective concerns over their existing agreements and compliance with ACC Decision No. 64360 (January 15, 2002); (2) supersede, replace and terminate any and all existing agreements between the Parties, except for certain provisions specifically identified herein; and (3) govern the Parties' relationship from the time of final ACC approval, if obtained, until the expiration of this Agreement according to its express terms.

RECITALS

A. The Talking Rock master planned community ("Talking Rock") is located in Yavapai County, Arizona. Talking Rock contains approximately 3,100 acres and, at build-out, will include roughly 1,600 homes. Talking Rock also includes common areas, a clubhouse, a health and fitness center and an 18-hole golf course ("Golf Course") owned and operated by TRGC.

B. Harvard Simon and ICRWUA entered into that certain Main Extension Agreement, dated March 5, 2001, ("MXA") pertaining to the extension of water utility service to Talking Rock. Under the MXA, Harvard Simon was obligated to finance, construct and transfer title to all on-site and off-site facilities necessary for ICRWUA to provide water utility service to Talking Rock. The MXA sets forth ICRWUA's "unconditional consent" for Harvard Simon to supply water to the Golf Course for "landscape irrigation, the filling of lakes and other non-potable purposes." The MXA also sets forth that ICRWUA "agrees to provide water utility service to the Golf Course for landscape irrigation, the filling of lakes and other non-potable purposes at a future date but only upon receipt of [Harvard Simon's] written request at which time such service would be provided consistent with the rules and regulations of the Commission and Utility's Commission approved tariffs."

C. Harvard Simon and ICRWUA entered into that certain Water Purchase Agreement dated April 27, 2001 ("WPA"). TRL had previously obtained a well site that could be used to serve Talking Rock and conducted test drilling. Pursuant to the WPA, Harvard Simon agreed to supply water from one or more wells drilled or to be drilled at this well site to ICRWUA on a wholesale basis to be used by ICRWUA for all purposes, excluding water service for landscape irrigation, lake fill, construction and other non-potable purposes.

D. On January 15, 2002, the ACC issued Decision No. 64360 extending ICRWUA's CC&N to include Talking Rock, subject to the condition that Harvard Simon transfer to ICRWUA "the wells which it has drilled for the purpose of providing water to the extension area

... to ensure that the utility has adequate water for its customers and to ensure that they are not subject to relying for their water on a third party over which the Commission lacks jurisdiction."

E. ICRWUA, Harvard Simon and TRGC entered into that certain Well Agreement dated February 25, 2003 ("Well Agreement"). Pursuant to the Well Agreement, Harvard Simon and TRGC agreed to transfer two wells in Talking Rock to ICRWUA: Production Well No. 2 ("Well 2") and Production Well No. 3 ("Well 3"). The Well Agreement further provided that a third well, Production Well No. 1 ("Well 1") (collectively, Well 1, Well 2 and Well 3 will be referred to as the "Talking Rock Wells"), had been drilled and that TRGC would retain title to Well 1 and continue to use water from wells that it or its affiliates owned to provide its own water for landscape irrigation, lake fill, construction and other non-potable purposes. The Well Agreement superseded, replaced and terminated the WPA.

F. ICRWUA and Harvard Simon entered into that certain First Amendment to Main Extension Agreement on February 25, 2003 ("First Amendment to MXA"). The First Amendment modified the MXA such that Well 2 and Well 3 would be included in the Talking Rock Parties advances in aid of construction. All other aspects of the MXA were left in full force and effect, with the Talking Rock Parties remaining obligated to finance and construct the water system necessary for (1) ICRWUA to serve customers residing within Talking Rock; and (2) the Talking Rock Parties to serve themselves and satisfy landscape irrigation, lake fill, construction and other non-potable water demand with water from the wells owned by the Talking Rock Parties.

G. On March 7, 2003, ICRWUA filed the Well Agreement and the First Amendment to MXA with the ACC for the purpose of complying with Decision 64630. The ACC Staff approved both the MXA and First Amendment to MXA on September 19, 2003. The Parties have relied on the express language of the Well Agreement and MXA, as amended, in connection with their development activities and operation of the Golf Course.

H. Harvard Simon assigned its rights and interest in the Well Agreement to TRL pursuant to that certain Assignment and Assumption of Well Agreement dated October 9, 2003. The Talking Rock Parties then executed the First Amendment to Well Agreement dated October 23, 2003 correcting the name to Talking Rock Golf Club, L.L.C.

I. Harvard Simon transferred Well 3 to ICRWUA pursuant to that certain Bill of Sale (Production Well) dated October 28, 2003 ("Well 3 Bill of Sale") recorded in Book 4088, Page 386, records of Yavapai County, Arizona.

J. ICRWUA and TRL entered into that certain Second Amendment to Well Agreement ("Second Amendment to Well Agreement") on September 15, 2005. Under the Second Amendment to Well Agreement, TRL agreed to provide additional water supply at its own expense in the event production from Well 3 was inadequate to meet demand from customers in Talking Rock before service to the 800th lot was extended.

K. On June 26, 2007, ICRWUA filed an application for rate increases with the ACC, ACC Docket No. W-02824A-07-0388. On April 3, 2008, TRGC moved to intervene in ICRWUA's rate case. TRGC asserted that it had a direct and substantial interest in the

proceeding as a result of the positions taken by other parties to the proceeding. TRGC was granted intervention on April 3, 2008.

L. On April 14, 2008, ICRWUA's rate case was delayed to allow ICRWUA and TRGC an opportunity to negotiate an agreement that would address the Parties' concerns over claims and position taken in ICRWUA's rate case. ICRWUA and TRGC entered into that certain Letter of Understanding ("LOU") on April 18, 2008.

M. TRGC transferred Well 2 to ICRWUA pursuant to that certain Bill of Sale (Production Well) dated as of May 21, 2008, ("Well 2 Bill of Sale") recorded in Book 4598, Page 645, records of Yavapai County, Arizona.

N. By this Agreement, the Parties intend to (1) resolve and settle the Parties' concerns over their existing agreements and compliance with Decision 64630; (2) supersede, replace and terminate all existing agreements between the Parties, except for certain provisions specifically identified herein; and (3) govern the Parties' relationship from the time of final ACC approval of this Agreement, if obtained, until the expiration of this Agreement according to its express terms.

O. Subject to the terms and conditions of this Agreement, TRGC will be a special contract customer of ICRWUA.

AGREEMENTS

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. By this reference, the Parties hereby incorporate the recitals above as part of their agreement as if fully set forth herein.

2. Well 1 Transfer; Well 2 Pump Motor Replacement; Warranties; Waiver of Prior Restrictions; Use of Talking Rock Wells.

a. Well 1 Transfer. Within fifteen (15) days of the Effective Date of this Agreement as defined in Section 11(c) below, the Talking Rock Parties shall transfer Well 1 to ICRWUA via bill of sale ("Well 1 Bill of Sale") in a form mutually satisfactory to the Parties, without condition, and subject only to the terms and conditions set forth herein.

b. Well 2 Pump Motor Replacement. After the Effective Date of this Agreement as defined in Section 11(c) below, the Talking Rock Parties shall pay the actual cost of purchasing and installing a new pump motor at Well 2 ("Well 2 Pump Motor Replacement") up to a maximum cost of $50,000. ICRWUA shall be responsible for identifying the make and model of the new pump motor and arranging for the installation of the pump motor. ICRWUA shall provide the Talking Rock Parties with an invoice specifying the cost of the Well 2 Pump Motor Replacement, and the Talking Rock Parties shall pay the invoice (up to a maximum of $50,000) within ten (10) business days of the date of receipt of the invoice from ICRWUA.

c. Warranties. The Talking Rock Parties shall provide the warranties in this Section against construction defects, manufacturing defects and defects in workmanship, but such warranties do not cover the negligent or intentional acts of ICRWUA, its employees, agents, contractors or representatives.

i. Well 1. For a period of one (1) year from the date of the Well 1 Bill of Sale (the "Well 1 Warranty Period"), the Talking Rock Parties shall warrantee (i) the workmanship and construction of Well 1, including without limitation, the well casing; and (ii) the pump motor, bowls and related components of Well 1.

ii. Well 2. For a period of one (1) year from the date of installation of the Well 2 Pump Motor Replacement (the "Well 2 Pump Motor Replacement Warranty Period") as required in Section 2(b) above, the Talking Rock Parties shall warrantee the Well 2 Pump Motor Replacement against any and all defects in manufacturing and workmanship.

iii. Air Production. The Talking Rock Parties agree that the maximum allowable air production ("Air Production") in water withdrawn from Well 1 and/or Well 2, expressed as a percent of unit volume of water produced from each well at atmospheric pressure, shall not exceed three point five percent (3.5%) (the "Maximum Allowable Air Production"). The Talking Rock Parties shall warrantee the Maximum Allowable Air Production (the "Air Production Warranty Period") for Well 1 during the Well 1 Warranty Period and for Well 2 during the Well 2 Pump Motor Replacement Warranty Period; provided, however, that if the Air Production Warranty Period for either Well 1 or Well 2 will expire on or after April 15 but on or before September 15 of the same calendar year, then the Air Production Warranty Period for such well shall be extended through and including September 15 of that calendar year. If the Air Production of Well 1 or Well 2 exceeds the Maximum Allowable Air Production during the Air Production Warranty Period, then ICRWUA shall notify the Talking Rock Parties of such occurrence in writing, and the Talking Rock Parties shall take such actions, in consultation and agreement with ICRWUA, as are necessary to reduce the Air Production at Well 1 and/or Well 2 to a level at or below the Maximum Allowable Air Production at the Talking Rock Parties' sole cost and expense. Air Production shall be measured using the procedure established during the test of the Talking Rock Wells (as hereinafter defined) as summarized in Attachment 1, which is incorporated herein as part of this Agreement.

d. Waiver of Prior Restrictions. The Talking Rock Parties hereby waive and release all restrictions on the amount and rate of water that may be pumped from Well 2 and Well 3 which are contained in the Well 2 Bill of Sale and the Well 3 Bill of Sale.

3. Use of Talking Rock Wells and the Well Field Property.

a. Perpetual Right to Enter the Well Field Property; No Charges to ICRWUA for Groundwater Withdrawn. The Talking Rock Parties will retain ownership of the real property upon which the Talking Rock Wells are located (the "Well Field Property"), but hereby grant to ICRWUA a perpetual right to enter the Well Field Property at any time day or night to operate, test, inspect, repair, replace and maintain the Talking Rock Wells. The legal description for the Well Field Property is attached hereto as Attachment 2. The Talking Rock Parties further agree that ICRWUA may pump the Talking Rock Wells and withdraw groundwater in quantities

necessary for ICRWUA to provide water service to its current and future customers on the Talking Rock water system subject to the terms of this Agreement and without any charge to ICRWUA for the groundwater withdrawn or for the rights granted to ICRWUA under this Agreement. The Talking Rock Parties further agree, on behalf of themselves and their respective successors and assigns, that they shall not construct or permit the construction of any additional wells on the Well Field Property or the equipping and use of the existing fourth well on the Well Field Property by any person or entity other than ICRWUA, subject only to ICRWUA's right to drill one or more replacement wells on the Well Field Property. The Parties intend that the rights of ICRWUA granted under this Section 3 shall run with the land and shall survive the expiration or termination of this Agreement, and the Parties agree that they will execute such additional documents, in recordable form, as may be deemed necessary to ensure that the rights granted to ICRWUA hereunder run with the Well Field Property.

b. Operation of the Talking Rock Wells. ICRWUA agrees that it will, at all times following the transfer of Well 1, operate, test, inspect, repair, replace and maintain the Talking Rock Wells at its own expense and in a manner that complies with Arizona and federal laws and that fulfills both its obligations under its CC&N and under this Agreement. ICRWUA further acknowledges and agrees that water from the Talking Rock Wells will only be used to serve its customers on the Talking Rock water system and for purposes of this Agreement, and that such restriction arises from recorded deed restrictions put in place by the seller of the Well Field Property whereon the Talking Rock Wells are located.

4. Service of Water for Landscape Irrigation, Lake Fill, Construction and Other Non-Potable Purposes; Maximum Amount; No Minimum Delivery; Quantity Required. ICRWUA agrees to and will deliver water to any and all of the Talking Rock Parties up to a maximum amount of 525 acre feet of water per year, of which a maximum of 400 acre-feet of water can be used at the Golf Course for Landscape Irrigation, Lake Fill and other non-potable purposes, and a maximum of 125 acre-feet of water can be used for Construction Purposes by any of the Talking Rock Parties in the development of Talking Rock, subject to the terms and conditions set forth in this Agreement. The Talking Rock Parties shall not be required to take any minimum amount of water under this Agreement, and retain the right to provide their own water supply without any provision by ICRWUA as long as such self-supply is not in violation of Arizona and/or federal law; provided, however, that ICRWUA shall remain solely responsible for supplying water to customers of ICRWUA within Talking Rock requesting water service from ICRWUA. The term "Landscape Irrigation" when used in this Agreement means the irrigation of any and all landscaping located anywhere within the Golf Course, whether such landscaping is turf or non-turf, and without regard to whether the water is delivered through sprinklers or drip irrigators or other means. The term "Lake Fill" when used in this Agreement means the filling of any water retention structures within the Golf Course, including decorative water features and holding ponds for Landscape Irrigation. The term "Construction Purposes" when used in this Agreement means water used by the Talking Rock Parties within Talking Rock for grading and compaction, installation of subdivision infrastructure, construction of structures (excluding residential home construction), and related uses.

5. Residential Priority; Curtailment of Water Service to Talking Rock Parties. Residential delivery of water pumped from the Talking Rock Wells shall have priority (the "Residential Priority") over all other use classifications including uses by the Talking Rock

Parties under this Agreement; provided, however, that curtailment ("Curtailment") in order to meet the Residential Priority shall occur only when there is insufficient water production from the Talking Rock Wells, in aggregate, to meet both the demand from residential customers and the demand from non-residential customers at Talking Rock (a "Water Shortage"), and shall continue only so long as the Water Shortage continues. During any Curtailment, ICRWUA shall make reasonable efforts to meet, in part, the demand from the Talking Rock Parties after ICRWUA fully meets the Residential Priority, and to resume normal water service to the Talking Rock Parties under this Agreement as soon as is practicable.

6. Payment for Water Service. The amount the Talking Rock Parties shall pay for water delivered by ICRWUA under this Agreement shall consist of (i) a System Reservation Charge, which shall terminate after ten (10) years; and (ii) a Commodity Charge, which shall be subject to annual adjustment, as set forth below in this Section. In accordance with Section 11 of this Agreement, the Parties agree that the ACC must approve the charges and the Commodity Charge-setting methodology set forth herein for the term of this Agreement.

a. System Reservation Charge. For a period of ten (10) consecutive years following the Effective Date of this Agreement as defined in Section 11(c) below, the Talking Rock Parties shall pay to ICRWUA a fixed, annual charge ("System Reservation Charge") as set forth below in this Section. The Talking Rock Parties shall pay the System Reservation Charge whether or not they receive any water from ICRWUA, and the System Reservation Charge shall be in addition to the Commodity Charge, which is payable under Section 6(b) below. The System Reservation Charges are as follows:

i.	Year One:	$50,000
ii.	Year Two	$50,000
iii.	Year Three	$50,000
iv.	Year Four	$40,000
v.	Year Five	$40,000
vi.	Year Six	$30,000
vii.	Year Seven	$30,000
viii.	Year Eight	$20,000
ix.	Year Nine	$20,000
x.	Year Ten	$10,000

b. Commodity Charge. In addition to the System Reservation Charge payable under Section 6(a) above, the Talking Rock Parties shall pay a commodity charge ("Commodity Charge") initially set at One dollar ($1.00) per 1,000 gallons of water delivered by ICRWUA to the Talking Rock Parties which Commodity Charge shall be subject to adjustment in accordance with the provisions of this Section 6(b).

i. Basis for Calculation. The Parties have agreed to the Commodity Charge in order to allow ICRWUA to recover its cost of service under this Agreement, plus an

appropriate operating margin. In calculating the Commodity Charge set forth in this Section 6(b), the Parties utilized the 2006 volume of water delivered through the Talking Rock water system to the Talking Rock Parties. The Parties have also relied on ICRWUA's Cost of Service Study filed in ACC Docket No. W-02824A-07-0388.

ii. Annual Adjustment. The Commodity Charge shall be subject to annual adjustment based on the average annual *Consumer Price Index - All Urban Consumers: Area-West Urban* issued by the US Bureau of Labor Statistics (the "Index"). Beginning one year after the Effective Date, the Commodity Charge for a Current Year, as hereinafter defined, shall be computed each year by multiplying the Commodity Charge for the Base Year, which is $1.00 as set forth in this Section 6(b), by a factor computed by dividing the Index for the most recent full year reported by the Bureau by the Index for the Base Year, rounded to the nearest penny. The Base Year shall be the year of the Effective Date of the Agreement. The Current Year shall be the year in which the annual adjustment is to be made. The adjustment shall be made annually for the term of the Agreement commencing one year after the Effective Date as defined in Section 11(c). By way of illustration only, if the Base Year Index is 208 and the Current Year Index is 215, then the adjustment factor would be 1.0337 (215 ÷ 208 = 1.0337). The new Commodity Rate for the Current Year would be $1.03 ($1.00 x 1.0337 = $1.03 (rounded to the nearest penny)).

iii. Adjustment for Costs to Comply with New Treatment Requirement or Groundwater Contamination.

(1) In the event that any Federal, State or County entity (excluding any special taxing district established under A.R.S. Title 48) imposes upon ICRWUA any new rule, requirement, regulation, ordinance, judgment, order or similar decree (collectively, a "New Treatment Requirement") which: (a) increases ICRWUA's capital and/or operational costs of treating water delivered through the Talking Rock water system; and (b) was not in effect as of the date this Agreement was signed, then the Parties shall immediately meet and confer and make an equitable adjustment to the Commodity Rate in order that ICRWUA is reimbursed for the Talking Rock Parties' allocable share (based upon volume of water delivered to the Talking Rock Parties during the most recent three-year rolling average) of the increased costs resulting from ICRWUA's compliance with the New Treatment Requirement.

(2) In the event that the groundwater withdrawn by ICRWUA from the Talking Rock Wells becomes contaminated ("Contamination") with any pollutant regulated by any Federal, State or County entity (excluding any special taxing district established under A.R.S. Title 48) and such Contamination requires additional treatment and/or remediation ("Treatment and Remediation") by ICRWUA which: (a) increases ICRWUA's capital and/or operational costs of delivering water through the Talking Rock water system; and (b) was not required as of the date this Agreement was signed, then the Parties shall immediately meet and confer and make an equitable adjustment to the Commodity Rate in order that ICRWUA is reimbursed for the Talking Rock Parties' allocable share (based upon volume of water delivered to the Talking Rock Parties during the most recent three-year rolling average) of the Treatment and Remediation costs resulting from the Contamination.

(3) The Talking Rock Parties shall only be responsible for

payment of an allocable share of the costs of complying with a New Treatment Requirement or any Treatment and Remediation costs under this Section to the extent that ICRWUA cannot physically separate potable water deliveries to Talking Rock from the delivery of water to the Talking Rock Parties under this Agreement; provided, however, that ICRWUA shall have no obligation to invest capital in a system that can separate the delivery of potable and non-potable water supplies.

iv. Future Cost of Service Study and Adjustment to Commodity Charge. On or after the seventh (7th) anniversary of the Effective Date of this Agreement as defined in Section 7(c) below, any Party may request in writing that a cost of service study ("COSS") be completed in order to evaluate whether the Commodity Charge continues to cover ICRWUA's cost of service for supplying water to the Talking Rock Parties under this Agreement plus an appropriate operating margin, which is the basis for establishing the initial Commodity Charge under Section 6(b)(i) above. The Parties shall mutually agree upon a certified public accountant with at least ten year's public utility accounting experience to prepare the COSS. One-half of the cost of the COSS shall be paid by ICRWUA and one-half of the COSS shall be paid by the Talking Rock Parties. The COSS shall be prepared in a manner consistent with the process used to determine the Commodity Charge as set forth in Section 6(b)(i) above. Within fifteen (15) days after the COSS has been provided to the Parties, the Parties shall meet and mutually agree upon an appropriate modification to the Commodity Charge based upon the COSS, with the understanding that the Commodity Charge shall cover ICRWUA's cost of service for supplying water to the Talking Rock Parties under this Agreement plus an appropriate operating margin.

v. Notice Filing. ICRWUA shall notify the ACC Utilities Division Staff of each annual change in the Commodity Charge.

c. Meter Reading; Access to Meters. On a monthly basis, ICRWUA shall provide the Talking Rock Parties with meter readings, and upon request shall also furnish water production and usage data, sufficient to allow the Talking Rock Parties to confirm the amount of water pumped from the Talking Rock Wells and the amount of water delivered from the Talking Rock Wells to the Talking Rock Parties under this Agreement. The Talking Rock Parties shall allow representatives of ICRWUA reasonable access to property owned and/or controlled by the Talking Rock Parties as necessary for ICRWUA to read the water meters. The Talking Rock Parties may request that ICRWUA calibrate and adjust the meter recording devices under this Agreement not more frequently than once per calendar year, at the cost of the Talking Rock Parties, unless the meter is found to be in error by more than 3%, in which event no costs of the meter reading and repair shall be charged to the Talking Rock Parties.

d. Billing and Timing of Payment; Point of Contact. The System Reservation Charge for Year One shall be paid within thirty (30) days of the Effective Date of this Agreement as defined in Section 11(c) below and paid annually thereafter on the anniversary of the Effective Date according to the schedule in Section 6(a) above. Commodity Charges shall be billed by ICRWUA and paid by the Talking Rock Parties on a monthly basis. The Talking Rock Parties shall identify a single point of contact ("Point of Contact") for receipt of all invoices to the Talking Rock Parties under this Agreement and shall notify ICRWUA in writing of the identify of the Point of Contract at the address set forth in Section 14(f) below. The Point

of Contact shall be responsible for remitting payment on behalf of the Talking Rock Parties for all invoices received by the Talking Rock Parties. Late fees shall be assessed in accordance with ICRWUA's tariff.

e. No Other Charges. ICRWUA agrees that it will not bill or otherwise require payment from the Talking Rock Parties for water for purposes of Landscape Irrigation, Lake Fill, Construction Purposes and other non-potable purposes except as provided for in this Agreement. This Agreement does not relate to or impact the rates and charges for water service by ICRWUA to the existing customers of the Talking Rock water system that are subject to ICRWUA's ACC approved tariff of rates and charges, including, for example, the Talking Rock health and fitness center and clubhouse.

7. Financial Assistance. In order to help defray ICRWUA's costs to negotiate and obtain approval of this Agreement, upon execution of this Agreement the Talking Rock Parties shall pay ICRWUA the amount of $30,000. Within thirty (30) days of the Effective Date of this Agreement as defined in Section 11(c) below, the Talking Rock Parties shall pay ICRWUA an additional $50,000.

8. Additional Well(s); Additional Transmission Facilities; Ownership and Operation; Operating Expenses and Commodity Charge; Use and Severance.

a. Additional Wells and Additional Transmission Facilities. Upon receipt of the prior written consent of ICRWUA, the Talking Rock Parties may drill, equip and interconnect one or more additional wells (*i.e.*, wells other than the Talking Rock Wells) ("Additional Well(s)") to the Talking Rock water system via the existing transmission system, if reasonable and prudent to do so, and/or via additional transmission facilities ("Additional Transmission Facilities") constructed by or for the Talking Rock Parties in order to supply water for Landscape Irrigation, Lake Fill, Construction Purposes and/or other non-potable purposes in Talking Rock. No consent is required unless the Talking Rock Parties request the interconnection of the Additional Well(s) and/or Additional Transmission Facilities to the Talking Rock water system. If consent is required, ICRWUA shall provide such consent within thirty (30) business days following written request by the Talking Rock Parties; provided, that each Additional Well(s) and/or Additional Transmission Facilities meet the following conditions:

i. New Source Approval Requirements. If the Talking Rock Parties utilize the Talking Rock delivery system as currently configured, which precludes separation of potable and non-potable water supplies for delivery to Talking Rock, then each Additional Wells(s) shall meet new source approval requirements applicable to ICRWUA's use of that Additional Well(s), as such requirements are codified in Federal, State and County (excluding any special taxing district established under A.R.S. Title 48) law. In the event that new transmission facilities are constructed by the Talking Rock Parties or are otherwise available which allow for the separation of potable and non-potable water supplies delivered to Talking Rock, then the Additional Well(s) will not have to meet new source approval requirements; provided, however, that ICRWUA shall have no obligation to invest capital in a system that can separate the delivery of potable and non-potable water supplies.

ii. Engineering and Permitting. The Additional Transmission

Facilities meet all applicable engineering standards, including those of ICRWUA, and permitting requirements;

iii. Non-Interference. The Additional Well(s) and Additional Transmission Facilities shall not unreasonably interfere with ICRWUA's operation of its Talking Rock water system.

b. Ownership and Operation; Easement and/or Legal Right of Access. The Talking Rock Parties shall retain ownership of any Additional Well(s) and Additional Transmission Facilities. After interconnection of each Additional Well(s) and Additional Transmission Facilities to ICRWUA's Talking Rock water system, such wells and facilities shall at all times be operated, tested, inspected, repaired and maintained by ICRWUA at ICRWUA's sole expense; provided, however, that nothing contained herein shall require ICRWUA to replace any Additional Well(s) or any Additional Transmission Facilities. The Talking Rock Parties agree that ICRWUA may pump any Additional Well(s) and withdraw groundwater subject to the terms of this Agreement without any charge to ICRWUA for the groundwater withdrawn, as long as such pumping does not interfere with delivery of water from such Additional Well(s) to Talking Rock. The Talking Rock Parties shall convey to ICRWUA such easement or other legal right of access as is reasonably required by ICRWUA to operate, test, inspect, repair and maintain the Additional Well(s) and the Additional Transmission Facilities.

c. Commodity Charge. Water delivered to any of the Talking Rock Parties from any Additional Well(s) through the Talking Rock water system shall be subject to the Commodity Charge under Section 6(b) of this Agreement. In the event that Additional Well(s) are used by the Talking Rock Parties but not connected to the Talking Rock system, then the Commodity Charge will not be applicable and ICRWUA will have no right to operate such Additional Well(s).

d. Use Limitations in Talking Rock; No Curtailment. ICRWUA and the Talking Rock Parties shall ensure that the annual production from any Additional Well(s) and delivered to the Talking Rock Parties is used only for Landscape Irrigation, Lake Fill, Construction Purposes and/or other non-potable purposes in Talking Rock. No Additional Well(s) shall be subject to Residential Priority and Curtailment as set forth in Section 5, nor shall such Additional Wells(s) be considered in determining whether a Water Shortage exists. This Section 8(d) is expressly subject to Sections 8(e) and 8(f) below.

e. Severance. Upon six (6) months written notice, the Talking Rock Parties may sever Additional Well(s) and/or Additional Transmission Facilities from ICRWUA's Talking Rock water system without any further obligation to provide supply from such wells to ICRWUA for any purpose, except as provided in Section 8(f) below. Severance shall be accomplished at the Talking Rock Parties sole cost and expense in coordination with ICRWUA, and in a manner that does not unreasonably interfere with ICRWUA's operations and which leaves ICRWUA's Talking Rock water system in the same or better condition. In the event that the Talking Rock Parties elect to sever any Additional Well(s) and/or Additional Transmission Facilities from the Talking Rock water system under this Section 8(e), then ICRWUA's obligation to supply water to the Talking Rock Parties for Landscape Irrigation, Lake Fill, Construction Purposes and other non-potable purposes under Section 4 shall thereafter be limited to supplying such water only if

and to the extent that ICRWUA has water available from the Talking Rock Wells after satisfying the Talking Rock Potable Water Demand as defined in Section 8(f) below.

f. Limitation on Right to Sever Additional Well(s) and/or Additional Transmission Facilities Required by ICRWUA to Supply Residential Water Demand in Talking Rock. Notwithstanding anything in this Section to the contrary, the Talking Rock Parties shall not be permitted to sever any Additional Well(s) and/or Additional Transmission Facilities if and so long as such Additional Well(s) and/or Additional Transmission Facilities are required by ICRWUA to supply the potable water demand, or any portion thereof, from customers within Talking Rock (the "Talking Rock Potable Water Demand"). For purposes of this Section, the Talking Rock Potable Water Demand shall be (i) the actual peak-day potable water demand for customers of ICRWUA on the Talking Rock water system in the year the Talking Rock Parties seek to sever the Additional Well(s) and/or Additional Transmission Facilities if the peak-day has occurred; or (ii) the estimated peak-day potable water demand for customers of ICRWUA on the Talking Rock water system in the year the Talking Rock Parties seek to sever the Additional Well(s) and/or Additional Transmission Facilities if the peak-day has not yet occurred. Further, if such Additional Well(s) and/or Additional Transmission Facilities are required in order for ICRWUA to supply the Talking Rock Potable Water Demand, then the limitations and exclusions set forth in Section 8(d) above shall not apply.

9. Prior Agreements. The Parties agree that the MXA, as amended, and Well Agreement, as amended, are valid and remain in full force and effect until the Effective Date of this Agreement as defined in Section 11(c) below. The Parties further agree that, as of the Effective Date, this Agreement shall become the principle agreement governing the Parties' relationship as water utility, developer, and Golf Course owner, and that each and every existing agreement between the Parties, as identified in the Recitals, is hereby superseded, replaced and terminated by this Agreement, except as follows:

a. Utility Facilities; Transfers; Refunds. Within thirty (30) days of the Effective Date of this Agreement, the Talking Rock Parties shall convey to ICRWUA and ICRWUA shall accept from the Talking Rock Parties all utility infrastructure constructed to serve Talking Rock which has not been transferred as of the Effective Date, subject only to the applicable warranties of the Talking Rock Parties with respect to such infrastructure including, without limitation, the warranties set forth in Section 2(c) of this Agreement, and any outstanding punch list items applicable to such infrastructure. The Parties agree that their rights and obligations under Sections 1-7 and 14-15 of the MXA, as amended by the First Amendment to MXA, with respect to the financing, construction and transfer of on-site and off-site facilities necessary for ICRWUA to extend water utility service to Talking Rock in accordance with its CC&N remain in full force and effect in conjunction with this Agreement, except as modified by this Section 9(a). The Parties further agree that ICRWUA's obligation to make refunds under Sections 8 and 9 of the MXA, as amended by Section 1(d) of the First Amendment to MXA, remains in full force and effect; provided, however, that ICRWUA may elect in its sole discretion to characterize utility infrastructure provided by the Talking Rock Parties as either advances in aid of construction or contributions in aid of construction, provided that no less than thirty percent (30%) of plant advanced or contributed is characterized as advances in aid of construction. The Parties further agree that amounts paid by the Talking Rock Parties under

Section 6 of this Agreement shall not be used in the determination of revenues for the purpose of determining the amount of any refunds for advances in aid of construction.

b. Incorporation of Surviving Provisions of MXA, as Amended by the First Amendment to MXA. The Parties agree that the portions of the MXA, as amended, that are intended to survive this Agreement, which sections are identified in this Section 9, are attached hereto as Attachment 3, and incorporated herein as part of this Agreement.

10. Conservation. The Talking Rock Parties agree to continue to use reasonable efforts to promote conservation within Talking Rock and to minimize the use of groundwater for Landscape Irrigation, Lake Fill and other non-potable purposes. TRGC further agrees to complete construction of an additional planned storage pond with an estimated capacity of 25,000,000 gallons no later than February 1, 2009, which deadline may be extended by the Talking Rock Parties for good cause and following notice to ICRWUA.

11. ACC Approval; Effect of Issuance of ACC Approval; Effective Date; Term.

a. Cooperation of the Parties. The Parties agree to cooperate fully and in good-faith to take all steps necessary and reasonable to seek ACC approval of this Agreement without material change, or if the ACC determines that it does not have authority to approve this Agreement, to seek ACC approval of the rates and charges contained in this Agreement without material change, including, without limitation, the term. Such approval shall be sought in ACC Docket No. W-02824A-07-0388. For purposes of this Agreement, a "material change" shall, in light of the surrounding circumstances, be a modification, alteration or amendment to the Agreement and/or any of its individual terms and conditions, including its provisions for rates and charges and term, such that a reasonable person would view such modification, alteration or amendment as having influenced the decision whether to have entered into this Agreement.

b. Effect of Issuance of ACC Approval.

i. ACC Approval Without Material Change. If the ACC approves this Agreement without material change, or alternatively, if the ACC determines that it does not have authority to approve this Agreement but approves the rates and charges contained in this Agreement for the term set forth in the Agreement, without material change, then each of the Parties shall submit a Statement of Acceptance within ten (10) business days of such order becoming final and non-appealable.

ii. ACC Approval With Material Change. If the ACC issues an order approving this Agreement but with material changes, or alternatively, if the ACC determines that it does not have authority to approve this Agreement but approves the rates and charges and/or term contained in this Agreement with material change, then each of the Parties shall submit either a Statement of Acceptance or a Statement of Non-Acceptance within ten (10) business days of such order becoming final and non-appealable. If any of the Parties submits a Statement of Non-Acceptance, such statement shall specify the reason for non-acceptance of the ACC order approving the Agreement and, thereafter, the Parties shall meet within ten (10) business days to discuss whether the reason for non-acceptance can be cured. If the Statement of Non-Acceptance is not withdrawn as a result of such meeting and a Statement of Acceptance issued,

the Parties hereby agree that this Agreement not become effective, shall have no force and effect, and that the Parties' existing agreements shall remain in full force and effect.

iii. ACC Denial of Approval. If the ACC issues an order denying approval of this Agreement, or alternatively, if the ACC determines that it does not have authority to approve this Agreement but denies the rates and charges and/or term contained in this Agreement, then the Parties hereby agree that this Agreement shall not become effective, shall have no force and effect, and that the Parties' existing agreements shall remain in full force and effect.

c. Effective Date. This Agreement has been executed as the date first included above. However, the Parties agree that this Agreement shall not be effective until the effective date ("Effective Date"), which shall be defined for purposes of this Agreement as the date upon which all Parties have submitted a Statement of Acceptance indicating that the final and non-appealable ACC decision approving the Agreement is acceptable.

d. Term. The initial term ("Initial Term") of this Agreement shall be thirty-five (35) years commencing upon the Effective Date as defined in Section 11(c) above. Thereafter, the Parties may agree to extend this Agreement and seek additional ACC approval, if necessary, to extend the Initial Term. If the Parties do not mutually agree to extend the Initial Term, then this Agreement shall expire at the end of the Initial Term and ICRWUA shall thereafter bill the Talking Rock Parties for all water delivered at the then currently applicable tariffed rates and charges approved by the ACC for Landscape Irrigation, Lake Fill and other like non-potable purposes.

12. Non-Discrimination Provision. ICRWUA agrees to treat the Talking Rock Parties and all customers in Talking Rock in a non-discriminatory manner.

13. Authority, Representations and Warranties.

a. ICRWUA represents and warrants that:

i. It is a non-profit association and public service corporation, duly organized and existing under the laws of the State of Arizona, and has, and as of the Effective Date will have, full legal right, power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.

ii. The Board of Directors of ICRWUA: (i) has duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement; and (ii) has duly authorized and approved the consummation of all other transactions contemplated by this Agreement.

iii. The consummation of the transactions contemplated in this Agreement will not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which ICRWUA is a party or may be otherwise subject, to the

extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement or any of the transactions contemplated by this Agreement.

iv. There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of ICRWUA, threatened: (i) in any way affecting ICRWUA's powers or the existence of ICRWUA; (ii) in any way contesting or affecting the validity or enforceability of this Agreement or any agreements entered into in connection therewith; or (iii) that may adversely affect ICRWUA or the purposes of this Agreement.

b. The Talking Rock Parties represent and warrant that:

i. Each are duly organized and existing under the laws of the State of Arizona, and have, and as of the Effective Date will have, full legal right, power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.

ii. Each is: (i) duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement; and (ii) duly authorized and approved the consummation of all other transactions contemplated by this Agreement.

iii. The consummation of the transactions contemplated in this Agreement will not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which one or more of the Talking Rock Parties is a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement or any of the transactions contemplated by this Agreement.

iv. There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of the Talking Rock Parties, threatened: (i) in any way affecting the Talking Rock Parties' powers or existence; (ii) in any way contesting or affecting the validity or enforceability of this Agreement or any agreements entered into in connection therewith; or (iii) that may adversely affect one or more of the Talking Rock Parties or the purposes of this Agreement.

c. Accuracy of Representations and Warranties. The Parties acknowledge that each and every representation, warranty, term and condition in this Agreement shall be true and accurate as of the date of execution of this Agreement, and as of the Effective Date as defined in Section 11(c) above, and shall constitute a material part of the consideration hereunder, and shall survive the execution of this Agreement.

14. Miscellaneous Provisions.

a. No Right to Challenge Withdrawal of Groundwater. The Talking Rock Parties hereby waive on behalf of themselves and their respective successors and assigns any right to challenge ICRWUA's withdrawal of water from the Talking Rock Wells, or from any Additional Well(s) as long as such Additional Well(s) is under the control of ICRWUA in

accordance with Section 8 of this Agreement, and so long as ICRWUA is not in breach of this Agreement. It is the Parties' mutual understanding and good faith belief that ICRWUA has the legal right and authority to withdraw groundwater from the Talking Rock Wells and any Additional Well(s), and once groundwater is withdrawn from such wells, ICRWUA is the owner of such groundwater.

b. Estoppel Certificate. After the Effective Date as defined in Section 11(c) above, a Party shall at any time and from time to time upon not less than ten (10) days' prior written notice from the other Party execute, acknowledge and deliver to the requesting Party a statement in writing: (i) certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect), and the date to which amounts due hereunder are paid in advance, if any; (ii) acknowledging that there are not, to the knowledge of the certifying Party, any uncured defaults on the part of the other Party hereunder, or specifying such defaults, if there are any claimed; and (iii) confirming such other matters as the requesting Party may reasonably request. Any such statement may be relied upon by the requesting Party, and any prospective purchaser or encumbrancer of the requesting Party's property. Upon a failure to sign the statement or notify the requesting Party in writing of any inaccuracies in the statement within the time period stated above, the statement submitted by a requesting Party shall be deemed approved.

c. Force Majeure. No Party to this Agreement shall be liable to any other Party for failure, default or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, in case such failure, default or delay is caused by strikes or other labor problems; forces of nature, unavoidable accident, fire, acts of the public enemy, delays in receipt of materials; or any other cause, whether of similar nature, not within the control of the Party affected and which, by the exercise of due diligence, such Party is unable to prevent or mitigate the outcome ("Force Majeure Matters"); provided, however, that the Party's failure, default or delay in performance shall be excused only for so long as such cause or event is present. Should any Force Majeure Matter occur, the Parties hereto agree to proceed with diligence to do whatever is reasonable and necessary with respect to the Force Majeure Matter so that each Party may perform its obligations under this Agreement.

d. Indemnity. After the Effective Date, ICRWUA shall indemnify, save and hold harmless the Talking Rock Parties and their members, officers, directors, partners, principals, employees and agents for, from and against any and all loss or damage arising from or relating to the storage, treatment, delivery or service of water withdrawn from the Talking Rock Wells or any Additional Well(s) by ICRWUA for the purpose of serving ICRWUA's customers in Talking Rock, including any liability resulting from the quality of the water of the Talking Rock Wells or any Additional Well(s), or any violation of laws, rules or regulations relating to human health or the safety or protection of the environment.

e. Assignment.

i. Right of Assignment as Part of Sale. Any of the Talking Rock Parties may assign this Agreement, or any rights and obligations hereunder, to another entity as part of a sale of the Golf Course, or of the Talking Rock development, in whole or in part, or as

part of the sale or merger of any of the entities making up the Talking Rock Parties, but only after notice to ICRWUA of the assignment. The notice required in this Section of the Agreement shall include (i) the assigning Party's written agreement to assign this Agreement, in whole or in part; and (ii) the assignee party's written agreement to be bound by the terms and conditions of this Agreement, including all financial obligations. An assignment under this Section of the Agreement shall be effective ten (10) business days after receipt by ICRWUA.

ii. Right of Assignment by Harvard Simon. The Parties hereby agree that all prospective rights and obligations imposed on Harvard Simon by virtue of this Agreement are hereby assigned by Harvard Simon to TRL and/or TRGC consistent with the material rights and obligations imposed on the Parties under this Agreement, and ICRWUA hereby agrees that, as of the Effective Date, Harvard Simon is released from any and all prospective obligations hereunder.

iii. Right/Duty of Assignment by ICRWUA as Part of Condemnation, Sale of Assets or Other Reorganization Impacting its Non-Profit or Other Corporate Status. ICRWUA shall ensure that all of its obligations under this Agreement are assigned to and accepted by any person or entity, including a restructured association or corporation, acquiring the Talking Rock water system by condemnation, purchase, merger, assignment or other lawful means of acquisition. The notice required in this Section of the Agreement shall include (i) ICRWUA's written agreement to assign this Agreement, in whole or in part; and (ii) the assignee party's written agreement to be bound by the terms and conditions of this Agreement, including all obligations for delivery of water to the Talking Rock Parties for Landscape Irrigation, Lake Fill, Construction Purposes and other non-potable purposes. An assignment under this Section of the Agreement shall be effective ten (10) business days after receipt of notice by the Talking Rock Parties.

iv. Other Assignments. Any other assignments shall require the other Party's or Parties' prior written consent to the assignment, such consent not to be unreasonably withheld.

v. Outstanding Amounts Due. On or before the date of assignment under this Agreement, the Talking Rock Parties agree to pay all unpaid charges due under this Agreement.

vi. Responsibility of Talking Rock Parties for System Reservation Charge. In the event of any assignment by the Talking Rock Parties of this Agreement, the Talking Rock Parties shall remain obligated and liable to ICRWUA for payment of all unpaid System Reservation Charges under Section 6(a) of the Agreement. In the event that any assignee of this Agreement fails to pay any System Reservation Charge when due, then ICRWUA shall notify the Talking Rock Parties of such failure in writing (by notice to the Point of Contact), and the Talking Rock Parties shall make such payment to ICRWUA on behalf of the assignee within fifteen (15) days following the date of the receipt of the written notice from ICRWUA.

f. Manner of Giving Notice. Any notice required or permitted to be given hereunder shall be in writing and directed to the address set forth below for the Party to whom the notice is given and shall be deemed delivered: (i) by personal delivery, on the date of delivery;

(ii) by first class United States mail, three (3) business days after being mailed; or (iii) by Federal Express Corporation (or other reputable overnight delivery service), one (1) business day after being deposited into the custody of such service. The address of ICRWUA for all notices under this Agreement shall be:

ICR Water Users Association, Inc.
Attn: Robert M. Busch
P.O. Box 5669
Chino Valley, Arizona 86323

With a copy also provided to:

Jeffrey W. Crockett, Esq.
SNELL & WILMER
One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202

The address of the Talking Rock Parties for all notices under this Agreement shall be:

Harvard Investments
Attn: Craig Krumwiede
17700 North Pacesetter Way
Scottsdale, AZ 85255

With a copy also provided to:

Jay L. Shapiro, Esq.
Fennemore Craig
3003 N. Central Ste. 2600
Phoenix, Arizona 85012-2913

Any Party may designate another person or address for notices under this Agreement by giving the other Party notice at least thirty (30) days prior to the effective date of the new designation.

g. Attorneys Fees and Costs. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party or Parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such Party or Parties may be entitled.

h. Binding Effect. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns.

i. Default. If any Party breaches or defaults under this Agreement, and such breach or default continues for a period of two (2) days with respect to any breach or default by ICRWUA under Section 3, or for a period of ten (10) days with respect to any breach or default

in the payment of money, or for a period of thirty (30) days with respect to any other breach or default, in each case after receipt by the defaulting Party of a written notice describing the default, the non-defaulting Party may immediately pursue any and all remedies available for such breach or default at law or in equity, including bringing an action for injunctive relief or for specific performance.

j. Time of the Essence. Time is of the essence of every provision hereof.

k. Governing Law. This Agreement shall be governed by the laws of the State of Arizona.

l. No Waiver. No change in, addition to, or waiver of any provisions of this Agreement shall be binding upon any Party unless in writing and signed by all Parties.

m. Counterparts. This Agreement may be executed in two or more original or facsimile counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

n. Enforceability; Invalidity of Provision or Provisions. In case any provision of this Agreement shall be determined to be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as most nearly to retain the intent of the Parties. If such modification is not possible, such provision shall be severed from this Agreement. In either case the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

o. Joint Drafting and Negotiation. The Parties have participated jointly in the negotiation and drafting of this Agreement, and each have been represented by legal counsel. If a question of interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the Parties hereto have caused this Water Service Agreement to be executed as of the day and year first above written.

ICR WATER USERS ASSOCIATION, INC.

By _____

Its: President HUGH C. ARYOR

HARVARD SIMON I, L.L.C.

By _____

Its: Manager

TALKING ROCK LAND, LLC

By:_____

Its: Manager

TALKING ROCK GOLF CLUB, LLC

By:_____

Its: Manager

IN WITNESS WHEREOF, the Parties hereto have caused this Water Service Agreement to be executed as of the day and year first above written.

ICR WATER USERS ASSOCIATION, INC.

By _____

Its: President_____

HARVARD SIMON I, L.L.C.,
By: Harvard Talking Rock, L.L.C.,
Its Operating Member,
By: Harvard Investments, Inc.,
Its Manager

By _____
Its: President

TALKING ROCK LAND, LLC,
By: Harvard Simon I, L.L.C.,
Its Manager,
By: Harvard Talking Rock, L.L.C.,
Its Operating Member,
By: Harvard Investments, Inc.,
Its Manager

By:_____
Its: President

TALKING ROCK GOLF CLUB, L.L.C.,
By: Harvard Simon I, L.L.C.,
Its Manager,
By: Harvard Talking Rock, L.L.C.,
Its Operating Member,
By: Harvard Investments, Inc.,
Its Manager

By:_____
Its: President

ATTACHMENT 1

PROCEDURE FOR MEASURING AIR PRODUCTION

Measurement of Allowable Air Production in Talking Rock Well 1 and Well 2

The measurement of the amount of air produced by Talking Rock Well 1 and Well 2 is based on a method developed by Southwest Ground Water for the test conducted in October 2007. The test was designed to establish the approximate volume of air in a given volume of water measured at atmospheric pressure. This percentage is obtained by:

1. Collecting a sample of water from the well in question in a small balloon. The volume collected in the balloon needs to be standardized for repeatability (try for 400 ml +/- 50 ml).

2. This sample is then inserted into a graduated beaker, the beaker is filled with water to a given volume (1,000 ml) and the balloon is removed. The water level in the beaker is measured and subtracted from the given volume thus obtaining the total volume of the balloon.

3. The balloon is then inserted into an Imholff Cone completely filled with water, inverted and standing in a tank of water nine (9) inches deep.

4. The balloon is ruptured inside the Imholff Cone and the volume of air released into the Cone is recorded.

5. This air volume is divided by the volume of the balloon obtained in step two above and multiplied by 100 to obtain the percentage of air per unit volume of water produced by the well.

Although only providing an approximate value for the volume of air in a given volume of water measured at atmospheric pressure, the technique does provide results that are consistently comparable and relate directly to the values obtained during the October 2007 well field test. The latter values have been used to set the allowable standard for the approximate volume of air in a given volume of water measured at atmospheric pressure.

ATTACHMENT 2

WELL FIELD PROPERTY LEGAL DESCRIPTION

LEGAL DESCRIPTION

That certain portion of Lot 2 of Valley View Estates as recorded in the "Amended Record of Survey for Valley View Estates" in Book 49 of Land Surveys, Page 66, Yavapai County Records, Arizona located in Section 17, Township 16 North, Range 3 West, of the Gila and Salt River Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING at the Southwest Corner of said lot;

Thence North 02° 27' 51" East along the westerly line of said lot a distance of 303.11 feet to the POINT OF BEGINNING;

Thence continuing North 02° 27' 51" East a distance of 269.75 feet;

Thence South 79° 51' 35" East leaving said westerly line a distance of 389.85 feet;

Thence South 04° 03' 10" West a distance of 619.62 feet to a point on the Northerly Right-of-Way line of the Williamson Valley Road as recorded in Book 11, Page 47, Yavapai County Records;

Thence North 62° 07' 46" West along said Right-of-Way a distance of 12.98 feet to terminus of said Right-of-Way, the beginning of a 25' easement for public utilities, public roadway, and drainage purposes, and the beginning of a nontangent curve concave to the southwest and having a radius of 1471.23 feet, the radius point of which bears South 28° 09' 35" West;

Thence northwesterly along said curve thru a central angle of 09° 31' 15" an arc length of 244.47 feet to a point on an existing well easement as recorded in the said "Amended Record of Survey for Valley View Estates";

Thence North 20° 15' 50" West along said well easement a distance of 334.90 feet to the POINT OF BEGINNING.

Containing 4.59 acres more or less.

That certain portion of Parcel 2 of Valley View Estates as recorded in the "Amended Record of Survey for Valley View Estates" in Book 49 of Land Surveys, page 66, Yavapai County Records, Arizona, located in Section 17, Township 16 North, Range 3 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Commencing at the Southwestern most corner of said parcel;

Thence North 02 degrees 27 minutes 51 seconds East along the Westerly line of said Parcel a distance of 25.48 feet to the POINT OF BEGINNING;

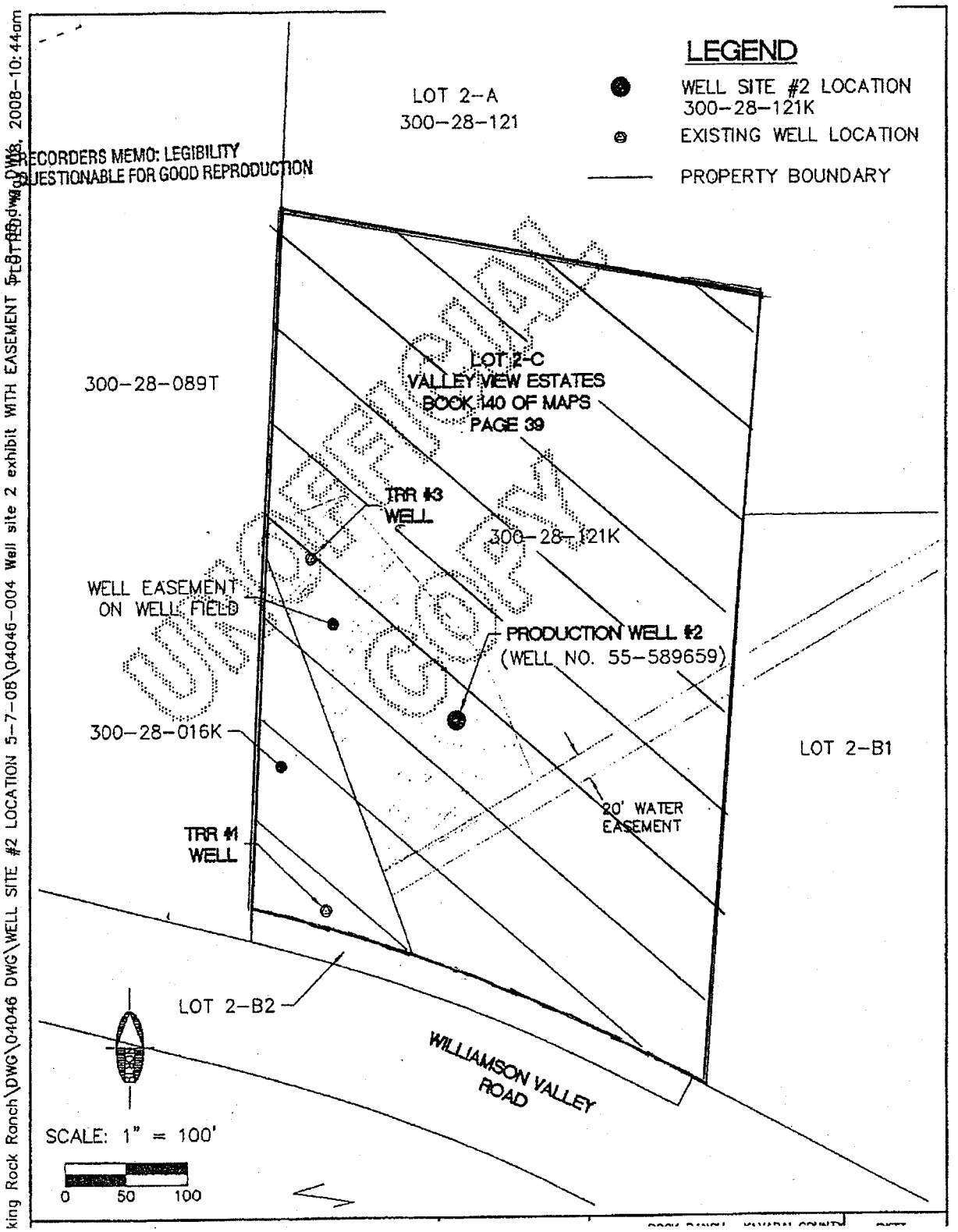
Thence continuing North 02 degrees 27 minutes 51 seconds East, a distance of 303.10 feet;

Thence South 20 degrees 15 minutes 50 seconds East leaving said Westerly line a distance of 334.90 feet to a point on the curved Northerly right of way line of a 25 feet wide easement for ingress, egress, utility, roadway and drainage, said curved right of way line being concave to the Southwest and having a radius of 1471.23 feet, the radius point of which bears South 73 degrees 55 minutes 50 West;

Thence Northwesterly along said last mentioned curve thru central angle of 05 degrees 08 minutes 20 seconds an arc length of 131.95 feet;

Thence continuing along the Northerly right of way line of said 25 foot wide easement South 76 degrees 30 minutes 00 second East, a distance of 1.21 feet to the POINT OF BEGINNING.

Containing approximately 0.45 acres more or less.


LEGEND
WELL SITE #2 LOCATION
300-28-121K
EXISTING WELL LOCATION
PROPERTY BOUNDARY
LOT 2-A
300-28-121
RECORDERS MEMO: LEGIBILITY
QUESTIONABLE FOR GOOD REPRODUCTION
LOT 2-C
VALLEY VIEW ESTATES
BOOK 140 OF MAPS
PAGE 39
300-28-089T
TRR #3
WELL
300-28-121K
WELL EASEMENT
ON WELL FIELD
PRODUCTION WELL #2
(WELL NO. 55-589659)
300-28-016K
LOT 2-B1
20' WATER
EASEMENT
TRR #1
WELL
LOT 2-B2
WILLIAMSON VALLEY
ROAD
SCALE: 1" = 100'
0
50
100
king Rock Ranch\DWG\04046 DWG\WELL SITE #2 LOCATION 5-7-08\04046-004 Well site 2 exhibit WITH EASEMENT 5-8-08.dwg, 5/8/2008 10:44:am

LEGAL DESCRIPTION

A parcel of land lying within Parcel 2, Amended Record of Survey of Valley View Estates as recorded in Book 49 of Land Surveys, Page 66 in the Yavapai County Recorder's Office (R1), lying in Section 17 , Township 16 North, Range 3 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona;

BEGINNING at the Southeast corner of Section 17, from which the East Quarter corner of Section 17 bears North 04°56'24" East, a distance of 2644.68 feet (Record per a Results of Survey as recorded in Book 53 of Land Surveys, Page 24 in the Yavapai County Recorders Office (R2) and Basis of Bearings for this description);

Thence North 46°18'18" West, a distance of 5869.55 feet (R2) to the Southwest corner of said Parcel 2 and the Southwest corner of a Well Easement as recorded in Book 3697 of Official Records, Page 369, Yavapai County Recorder's Office (R3), said point being on the Northerly Right of Way line of Williamson Valley Road;

Thence North 02°31'38" East, along the Westerly line of said Parcel 2, a distance of 25.48 feet (North 02°27'51" East, a distance of 25.48 feet R3);

Thence South 76°26'12" East, along the Northerly line of a 25.00 feet wide Easement for Public Utilities, Public Roadway and Drainage Purposes per R1, a distance of 1.21 feet (South 76°30'00" East, a distance of 1.21 feet R3), to a point of curvature, the central point of which bears South 13°33'48" West;

Thence along a curve concave Southwest, having a radius of 1471.23 feet, through a central angle of 05°08'20", a distance of 131.95 feet (R3);

Thence leaving said Northerly Easement line, North 20°12'03" West, (North 20°15'50" West R3), along the Easterly line of R3, a distance of 69.75 feet to the TRUE POINT OF BEGINNING;

Thence continuing along the Easterly line of R3, North 20°12'03" West (North 20°15'50" West R3), a distance of 265.15 feet to a point on the West line of said Parcel 2 (per R1);

Thence leaving the Easterly line of R3, North 02°31'38" East (North 02°27'51" East R1), along the West line of Parcel 2, a distance of 24.22 feet;

Thence leaving the West line of Parcel 2, North 69°47'57" East, a distance of 65.64 feet;

Thence South 40°37'38" East, a distance of 170.16 feet;

Thence South 22°57'00" East, a distance of 104.63 feet;

Thence South 60°13'27" West, a distance of 141.37 feet to the TRUE POINT OF BEGINNING.

Containing 0.75 Acres, more or less.

That certain portion of Parcel 2 of Valley View Estates as recorded in the "Amended Record of Survey for Valley View Estates" in Book 49 of Land Surveys, page 66, Yavapai County Records, Arizona, located in Section 17, Township 16 North, Range 3 West, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Commencing at the Southwestern most corner of said parcel;

Thence North 02 degrees 27 minutes 51 seconds East along the Westerly line of said Parcel a distance of 25.48 feet to the POINT OF BEGINNING;

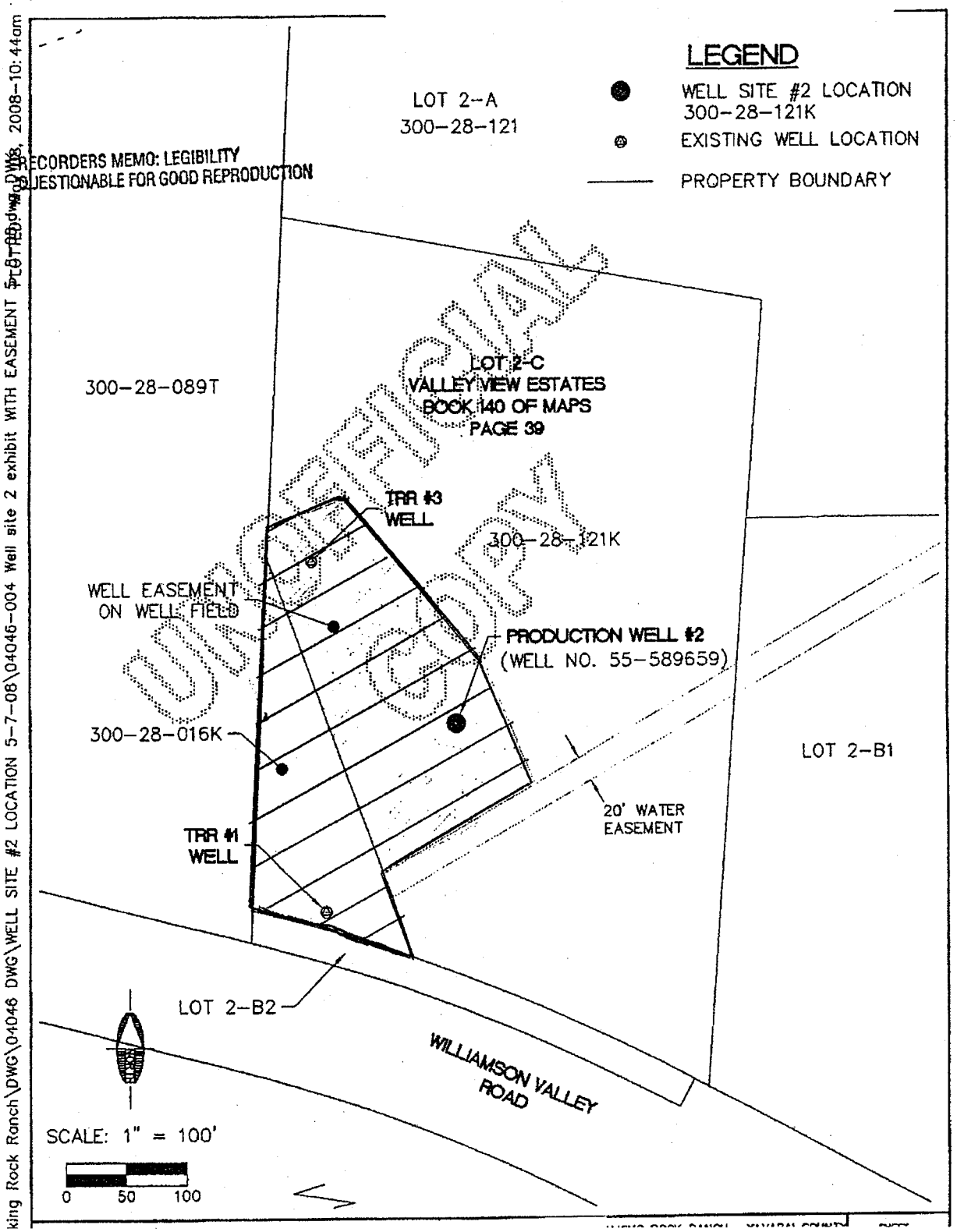
Thence continuing North 02 degrees 27 minutes 51 seconds East, a distance of 303.10 feet;

Thence South 20 degrees 15 minutes 50 seconds East leaving said Westerly line a distance of 334.90 feet to a point on the curved Northerly right of way line of a 25 feet wide easement for ingress, egress, utility, roadway and drainage, said curved right of way line being concave to the Southwest and having a radius of 1471.23 feet, the radius point of which bears South 73 degrees 55 minutes 50 West;

Thence Northwesterly along said last mentioned curve thru central angle of 05 degrees 08 minutes 20 seconds an arc length of 131.95 feet;

Thence continuing along the Northerly right of way line of said 25 foot wide easement South 76 degrees 30 minutes 00 second East, a distance of 1.21 feet to the POINT OF BEGINNING.

Containing approximately 0.45 acres more or less.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WELL SITE #2 LOCATION
300-28-121K
EXISTING WELL LOCATION
PROPERTY BOUNDARY
LOT 2-A
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RECORDERS MEMO: LEGIBILITY
QUESTIONABLE FOR GOOD REPRODUCTION
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(WELL NO. 55-589659)
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LOT 2-B1
20' WATER
EASEMENT
TRR #1
WELL
LOT 2-B2
WILLIAMSON VALLEY
ROAD
SCALE: 1" = 100'
0
50
100
UNOFFICIAL DOCUMENT
king Rock Ranch\DWG\04046 DWG\WELL SITE #2 LOCATION 5-7-08\04046-004 Well site 2 exhibit WITH EASEMENT 5-07-08.dwg, 5/8/2008 10:44:am

ATTACHMENT 3

MXA PROVISIONS

ATTACHMENT 3
MXA PROVISIONS

Sections 1 – 9 and 14 – 15 of MXA

1. Construction of Water Utility Facilities by Developer.

(a) Construction of Facilities. At its sole expense, Developer shall construct and install, or shall cause to be constructed and installed water utility facilities consisting of water distribution mains and pipelines, valves, hydrants, fittings, service lines and all other related items of utility plant, both on-site and off-site, to be used to extend water service to each lot, building or other customer within the Property (the "Facilities") as more particularly described in Exhibit "C" attached hereto and incorporated herein by this reference. Exhibit "C" also contains an estimated cost of construction for the Facilities. Utility hereby acknowledges and agrees that the Property may be developed in separate phases and that Developer may construct and install the Facilities in phases in a manner that will allow for the provision of water utility services to each phase as necessary and in a timely manner. The size, design, type and quality of materials used to construct the Facilities, as well as the location of the Facilities upon and under the ground, shall be approved by Utility, which approval shall be promptly provided and which shall not be unreasonably withheld.

(b) Utility's Use of the Facilities. Utility covenants and agrees that it shall use its best efforts to ensure that the Facilities are not used to serve customers outside the Property in a manner that adversely impacts the provision of water utility service to the Property. Utility further represents to Developer that, in Utility's judgment, the cost of constructing the Facilities is disproportionate to anticipated revenues to be derived from future customers within the Property.

2. Engineering Plans. Developer has retained Shephard-Wesnitzer, Inc. to prepare engineering plans and specifications for the Facilities to be constructed hereunder. Developer may retain additional engineers or other consultants as determined in Developer's sole discretion to be necessary in connection with the design and installation of the Facilities. All plans and specifications shall be submitted to Utility and its engineers for review and approval, together with a copy of the subdivision plat for the Property and drawings depicting the infrastructure improvements for the subdivision.

3. Design and Construction Standards; Regulatory Approvals. All Facilities designed and constructed by Developer hereunder shall be in strict conformance with the plans and specifications therefor, and the applicable regulations of the Yavapai County Environmental Services Department ("Environmental Services"), Arizona Department of Environmental Quality ("ADEQ"), the Commission and/or any other governmental agency exercising jurisdiction over the design and construction of potable water systems. Prior to construction of any Facilities, Developer shall obtain approval to construct from either Environmental Services or ADEQ. Upon completion of the Facilities, Developer shall obtain approval of construction from either Environmental Services or ADEQ. Developer shall also be responsible for obtaining any additional permits, licenses and/or approvals required for the construction of the Facilities. Utility shall cooperate with and assist Developer promptly, as may be reasonably required, in obtaining such certificates and approvals. All contractors and subcontractors employed by Developer in connection with the construction of the Facilities shall be licensed by the Arizona Registrar of Contractors and shall be qualified in the construction of public water systems.

4. Right of Inspection; Corrective Action. Utility shall have the right to have its engineers, the selection of which shall be subject to Developer's approval, inspect and test the Facilities at reasonable times during the course of construction as necessary to ensure conformance with plans and specifications. If at any time before the final acceptance by Utility of the Facilities any construction, materials or workmanship are found to be defective or deficient in any way, or the Facilities fail to conform to this Agreement, then Utility may reject such defective or deficient construction, materials and/or workmanship and require Developer to fully pay for all necessary corrective construction efforts ("Corrective Action").

Utility reserves the right to withhold approval and to forbid connection of any defective portion of the Facilities to Utility's system unless and until the Facilities have been constructed in accordance with plans and specifications and all applicable regulatory requirements. Further, Developer shall promptly undertake any Corrective Action required to remedy such defects and deficiencies in construction, materials and workmanship upon receipt of notice by Utility. The foregoing notwithstanding, Utility shall not unreasonably withhold or delay acceptance of the Facilities.

5. Transfer of Ownership; As-Built Plans; Warranty.

(a) Transfer of Ownership. Upon proper completion, testing and final inspection of the Facilities by Utility, Utility shall issue a written notice of acceptance to Developer. Immediately thereafter, Developer shall convey to Utility, via a bill of sale in a form satisfactory to Utility, the Facilities together with any permanent easements and/or rights-of-way required pursuant to paragraph 7 below. All Facilities so transferred shall thereafter become and remain the sole property and responsibility of Utility. Developer covenants and agrees that, at the time of transfer, the Facilities shall be free and clear of all liens and encumbrances, and Developer shall provide evidence in the form of lien waivers or other appropriate documents that all claims of contractors, subcontractors, mechanics and materialmen have been paid and are fully satisfied.

(b) As-Built Plans. At the time of transfer, Developer shall provide to Utility three (3) sets of "as-built" drawings and specifications for the Facilities, certified and sealed by Developer's engineers to be true and correct.

(c) Warranty. Developer warrants that, upon their completion, the Facilities will be free from all defects and deficiencies in construction, materials and workmanship for a period of time commensurate with the warranty period provided to Developer by contractors retained by Developer to construct the Facilities, but in no event, for a period of less than one (1) year from the date of Utility's acceptance. During the warranty period, Developer agrees to promptly undertake any Corrective Action required to remedy such defects and deficiencies upon notice by Utility. Upon Utility's acceptance of the Facilities, as provided in this paragraph, Utility shall be deemed to have accepted the Facilities in "as is" and "as-constructed" condition, subject only to the warranty period concerning defects and deficiencies in construction, materials and workmanship provided for herein.

6. Reimbursement for Inspection Costs, Overhead and Other Expenses of Utility. Developer shall reimburse Utility for Utility's reasonable fees, costs and expenses incurred in connection with its review of the engineering plans and specifications for the Facilities, the preparation of this Agreement and other necessary legal services, inspection and testing of the Facilities during their construction, and other fees, costs and expenses reasonably and necessarily incurred by Utility with respect to this project during the course of construction and in connection with obtaining approval of the Commission to extend Utility's CC&N to include the Extension Area (collectively, "Administrative Costs"). Utility covenants to use reasonable efforts to incur Administrative Costs only as necessary and prudent. On a monthly basis, Utility shall provide Developer with a written statement describing with specificity all Administrative Costs incurred by Utility during the preceding month, together with complete copies of all bills, statements and invoices supporting such Administrative Costs. Developer shall make payment on or before the fifteenth (15th) day of the calendar month following the month in which Utility's statement is received. Utility hereby acknowledges its receipt of $5,000.00 as a deposit, which deposit shall be applied as a credit against Administrative Costs incurred by Utility hereunder.

7. Public Streets and Rights-of-Way; Easements; Spacing of Lines. At the time of transfer of ownership of any Facilities, as provided in paragraph 5 above, Developer shall provide Utility with evidence satisfactory to Utility that all distribution mains and service lines within the Property are located within dedicated streets and/or public rights-of-way. In the event that any distribution mains or service lines are not located within dedicated streets and/or public rights-of-way, then at the time of transfer of ownership of such Facilities, Developer shall grant to Utility, or shall cause to be granted to Utility, easements and/or rights-of-way, free from all liens and security interests thereon, and in a form that is

satisfactory to Utility, over, under, and across all pipeline routes and all portions of the Property necessary to operate, maintain and repair such Facilities. Unless otherwise mutually agreed upon in writing, such easements and/or rights-of-way within the Property shall be free of physical encroachments, encumbrances or obstacles, and shall have a minimum width of ten (10) feet. The distribution mains and service lines constructed and installed by Developer within the Property shall be separated by a reasonable distance from other utility lines and facilities to prevent damage or conflicts in the event of repairs or maintenance.

8. Determination of Amount of Developer Advances. The actual cost of constructing and installing the Facilities described in paragraph 1 above and all amounts paid by Developer pursuant to paragraph 6 above shall constitute an advance in aid of construction and shall be refundable to Developer in accordance with paragraph 9, below. Developer shall provide Utility with a written statement setting forth in detail Developer's actual costs of construction within ten (10) business days following receipt of Utility's notice of acceptance of the Facilities, together with copies of all invoices, bills, statements and other documentation evidencing the cost of construction. The costs of any Corrective Action, as defined in paragraph 4 above, the costs of curing any defects arising during the warranty period, as provided herein, and the costs of any unreasonable overtime incurred in the construction of the Facilities shall not be included in the actual cost of constructing and installing the Facilities, and shall not be subject to refund by Utility hereunder.

9. Refunds of Advances to Developer. Following the District's acquisition of the Facilities pursuant to paragraph 5(a) hereinabove, Utility shall refund annually to Developer an amount equal to fifteen percent (15%) of the gross annual operating revenues from water sales to bona fide customers of Utility within the Property. Such refunds shall be paid by Utility on or before August 31 of each calendar year for the preceding July 1 to June 30 period, commencing in the fifth calendar year immediately following the initiation of water utility service to the first customer within the Property by Company, continuing thereafter in each succeeding calendar year for a total of twenty (25) years. No interest shall accrue or be payable on the amounts to be refunded for the Facilities hereunder, and any unpaid balance remaining at the end of such twenty-five year period shall become a non-refundable contribution in aid of construction to Utility and be recorded as such in the Utility's books and records of account. In no event shall the total amount of the refunds paid by Utility pursuant to this Agreement exceed the total amount of all refundable advances paid by Developer in connection with the construction of the Facilities.

14. Right of Assignment. Developer may assign this Agreement, or any of its rights and obligations hereunder, to another party provided that written notice of such assignment is given to Utility prior to the effective date of assignment and that the assignee agrees in writing to fully perform Developer's obligations hereunder and to be bound by this Agreement.

15. Condemnation or Sale of Utility. In the event of the condemnation or sale of the Facilities, Utility shall promptly pay to Developer any unrefunded portion of Developer's advances in aid of construction. Payment by Utility shall be made on or before thirty (30) days from the date on which Utility receives payment.

First Amendment to MXA: Provisions amending Sections 1 – 9 or 14 – 15 of MXA

1. Amendment to Agreement.

(a) Off-Site Facilities. Paragraph 1(a) of the Agreement is amended to provide that the "Facilities" include two production wells that have been installed and constructed by Developer and are described as Production Well 3 and Production Well 2 in that Well Agreement to be executed by Company, Developer and Talking Rock Golf, L.L.C. concurrently with the execution of this Agreement (the "Well Agreement"). A Revised Exhibit "C" reflecting the actual costs of the two production wells is attached hereto and incorporated herein by this reference.

(b) Utility's Use of the Facilities. Paragraph 1(b) of the Agreement is amended to provide that Company covenants and agrees that Company shall use and operate the production wells

installed and constructed by Developer and transferred to Company pursuant to the Well Agreement only in accordance with the use restrictions contained in the Well Agreement and the conditions and restrictions contained in that Special Warranty Deed from Bluegreen West Corporation to Talking Rock Land dated January 26, 2001 and recorded on January 26, 2001 in book 3807, page 626, records of Yavapai County, Arizona, pursuant to which Developer's affiliate acquired the location of the production wells.

(c) Transfer of Ownership. Paragraph 5(a) of the Agreement is amended to provide that, pursuant to the Well Agreement, (i) immediately after the approval of this First Amendment by the Commission or its staff, Developer will transfer and convey Production Well 3 to the Company, via Bill of Sale in form attached to the Well Agreement; and (ii) on or before the date that the Company provides water service to the 800th single-family residence at the Property, Developer's affiliate, Talking Rock Golf, will transfer and convey Production Well 2 to the Company, via Bill of Sale in form attached to the Well Agreement. All other Facilities shall be conveyed in accordance with the terms of the Agreement.

(d) Determination of Amount of Developer Advances. Paragraph 8 of the Agreement is amended to provide that the actual costs of Production Well 3 and Production Well 2, including all equipment, pumps, motors, valves, pipes, electrical system and other appurtenances installed and constructed by Developer and transferred and conveyed by Developer or by Talking Rock Golf to Company, shall constitute an advance in aid of construction and shall be refundable to Developer in accordance with paragraph 9 of the Agreement.